Supreme Court, U.S.
FILED

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No_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

WILBURTA T. HOLDEN LIVING TRUST,
Petitioner,
vs.
JOINT CITY-COUNTY BOARD OF
TAX ASSESSORS,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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41 pp

QUESTIONS PRESENTED FOR REVIEW

1.

Whether the 1991 and 1992 tax reappraisals, which were made by the Respondents (Assessors) of Holden's real estate and of all other real estate located in Fulton County, Georgia and City of Atlanta, Georgia, deny Holden of due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and by the Georgia Constitution.

2.

Whether the appraisal methology adopted by the Assessors violated the Fifth and Fourteenth Amendments to

the Constitution of the United States and the Constitution of the State of Georgia.

3.

Whether the trial judge should have been disqualified because he was a taxpayer in Fulton County and City of Atlanta and $30,000 of his salary was paid by Fulton County and whether Holden was denied due process and equal protection of the same Constitutions because the trial judge was not qualified to preside.

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TO THE COURT OF APPEALS OF THE

STATE OF GEORGIA

The opinion of the Court of Appeals of Georgia which is set forth in the Appendix (A-1), affirmed the judgment of the trial court. The trial court's opinion (B-1) granted

a motion for a directed verdict.

The grounds upon which jurisdiction of this Court is invoked is the denial of due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and the denial of equal protection of the laws under the Fourteenth Amendment.

The date of entry of the judgment of the Court of Appeals is August 15, 1995.

The jurisdiction of this Court to review the order of the Court of Appeals of Georgia is invoked under 28 U.S.C. §1254(11).

CASE HISTORY

The original complaint was filed in the Fulton Superior Court of Georgia and the constitutional issue was tried without a jury. The trial court directed a verdict in favor of the Assessors. This verdict was appealed to the Supreme Court of Georgia who transferred it to the Court of Appeals of Georgia. The Court of Appeals upheld the trial court on August 15, 1995. Holden then filed a petition for writ of certiorari in the Georgia Supreme Court which was denied on November 9, 1995. Notice of intention to file a petition for writ of certiorari in this court was given the Georgia

Court of Appeals on November 15, 1995.

Article 6, Section 6, Paragraph 2 of the Georgia Constitution provides that the Georgia Supreme Court shall exercise exclusive appellant jurisdiction in all cases involving the constitutions of the State of Georgia and the United States and that was why the appeal was originally filed in the Supreme Court of Georgia. The Court of Appeals had jurisdiction in this matter because the Supreme Court of Georgia said so and transferred the case to that court.

STATEMENT OF CASE

Fulton County and the City of Atlanta directed Respondents to employ Cole-Layer-Trumble Company (CLT) to prepare reappraisals for the year of 1991 of all real estate in the County and the City. CLT conducted such a reappraisal of all 160,000 residences and 70,000 commercial properties. The results of the 1991 reappraisals were used by the City and County for the basis of the preparation of the 1991 and 1992 tax bills. The principal thrust of this case is that the people employed by CLT to make the reappraisals were so inexperienced and untrained that they inevitably produced a flawed

reappraisal. The persons employed by CLT had no formal education in real estate, had no actual experience with real estate or appraisals and had not even been enrolled in any of the courses required by Georgia law for people engaged in appraisal work.

We have set out below a brief description of each CLT employee by name and occupation in which that person was engaged prior to their employment regarding the re-appraisals.

Name	Occupation
Beckett	Clerk with Federal Reserve
Allen	Dispatch Clerk
Bohart	Construction Laborer

Brown	Secretary at Emory University Clinic
Cole	School Superintendent, Grades 7-12
Conty	Home Construction Repairman
Cox	Photographer
DeSilva	Bookkeeper
Ellsworth	Receptionist
Desmarines	"Lister" - Other information indicated a Lister is one who lists physical characteristics of a house
Dew	Self-employed
Farmer	Ramp service employee of Eastern Airlines
Folherts	Built grain bins in

	Missouri
Grunger	Tax consultant
Gec	On job training to learn real estate
Gogarty	Sold books door to door
Hendricks	Accounting clerk
Jackson	Retail sale of photographic supplies
Junior	Kept inventory records for Delta
James	Accounting Clerk
Lee	Inventory control clerk with Eastern
Morgan	Clerk for collection agency
Pyle	Set up tables at restaurant

Rakerh	Bookkeeper in retail music shop
Robinson	U.S. Postal Clerk
Schultz	Youth Director at Forrest Hills Baptist Church
Showers	Worked for temporary employment company
Smith	Telephone magazine salesman
Sonshein	In process of securing license to sell real estate
Spruell	Retail clothing sales
Welak	Prepared produce in grocery store

The state of origin and the

number of CLT employees from each state is shown as follows:

8 from Ohio

4 from Massachusetts

4 from Kansas

3 each from New York, New Jersey, Florida, North Carolina Missouri and Pennsylvania

2 each from California, Texas, Michigan, Tennessee and Louisiana

1 each from South Carolina, West Virginia, Alabama, Illinois, Wisconsin, Mississippi, Nebraska, Washington, D.C.

2 from New Guinea

1 each from Jamaica and Ethiopia

17 from Georgia

Therefore, 56 of CLT's employees

come from 22 states other than Georgia. There was no evidence that the persons from these 22 states knew anything about Georgia real estate.

It is not hard to understand that a person from Ohio, Massachusetts, New York, New Jersey, California, New Guina, Ethiopia and Jamaica have no idea what land is presently valued at in Fulton County in the City of Atlanta. Can you imagine these same people trying to evaluate correctly real estate in San Francisco, New Orleans or New York City?

27,262 taxpayers requested reviews of their 1991 tax appraisals. CLT and the County agreed that 15,026

were in error. That means that 55% of the appraisals which were reviewed, were in error. There were 45,000 appeals of the 1992 tax appraisals of which 11,000 were incorrect. The changes of appraisals of these 11,000 parcels by the Board of Equalization resulted in a reduction in the tax digest in the amount of $3.4 billion.

The reappraisals made by CLT were erroneous and illegal for the following reasons:

(a) A large part of Fulton County is hilly and rolling country with many streams and small rivers. The entire northwest side of Fulton County is bordered by the Chatt-

ahoochee River which separates Fulton County from Cobb, Douglas, Forsyth, Coweta and Gwinnett Counties. This stretch of the River is approximately 75 miles in length. The Corps of Engineers of the U.S. Army has established a 50 and 100 year flood plain along the Chattahoochee River in Fulton County as well as in the adjoining counties. No structures can be erected in said flood plains without the permission of the Corps of Engineers. Said area is also subject to the (U.S.) Wet Lands Act and to the Metropolitan River Protection Act, Official Code of Georgia (O.C.G.A.) §12-5-440, (also known as the Chattahoochee River

Corridor Act); both of which give governmental authorities power to restrict the use of land in the flood plain. The Chattahoochee River Corridor Act provides that nothing can be built in Fulton County within 1,000 feet of the Chattahoochee River without the approval of the Atlanta Regional Commission and the City of Atlanta and/or Fulton County. A property owner can not disturb the land within 100 feet of the Chattahoochee River and can not increase run off water by virtue of new construction without the permission of the governmental authorities. The Chattahoochee River Protection Act has been upheld as a

constitutional exercise of police power for the general welfare and to protect the source of drinking water for all the counties that border on the Chattahoochee River, including those downstream of Fulton County (**Pope vs. County of Fulton**, 240 Ga. 177) (240 SE2d 241). There are large tributaries of the Chattahoochee which flow in Fulton County, such as Peachtree Creek and Nancy Creek, and all of these tributaries have flood plains which have been established by governmental authorities, including the U.S. Corps of Engineers. When CLT prepared the 1991 reappraisals they did not consider the effect of the flood

plains on the parcels of land included therein. The man in charge of CLT appraisals (Copeland) testified he had never seen this flood plain information. The Chairman of the Board of Tax Assessors in Fulton County testified he had seen it but was not familiar with it. Parcels affected by the flood plains are in the thousands in number.

(b) Many parcels of land in Fulton County are landlocked, meaning that they have no street frontage and there is no access to the property from a public street. Where a parcel was landlocked, CLT did not consider the effect of its condition

on the value of such landlocked properties.

(c) There were sales of parcels of land in Fulton County in 1990 and prior to March 1991 when the 1991 reappraisals were mailed. These prior sales were at prices less than the appraised values established in the 1991 assessments. CLT did not investigate prior sales of the same properties and established the appraised value higher than the actual sales prices that were available for comparison.

(d) CLT made appraisals of properties which were higher than other properties of comparable value. In some cases of land which had been

developed for apartments and condominiums, CLT appraised all condominiums and apartments at the same value even though the units would vary from one to three bedrooms and vary in many other aspects.

(e) CLT did not adequately inspect the properties they were appraising. CLT made errors regarding square footage of the buildings, type of construction, the number of bedrooms, whether or not they had basements and other physical characteristics.

(f) CLT appraised each parcel by placing a value on the land and placing another value on the improvements. In some cases CLT

placed a value on the improvements when there were no actual improvements constructed on the land.

(g) CLT simply ignored the zoning regulations of Fulton County and City of Atlanta as to the effect that those regulations had upon the use or development of the property. In the process of preparing the 1991 reappraisal, CLT established over 800 neighborhoods and in each neighborhood established a value in terms of square footage regardless of zoning regulations, topography and use of the land. The R-1 zoning is the highest residential zoning in the City of Atlanta. Copeland testified he did not know what R-1 meant.

(h) The method employed by CLT in preparing the data base for their computers was faulty, inappropriate and did not establish a fair market value in a fair and equitable manner. CLT was negligent in the preparation of the 1991 reappraisals which are so flawed that they can not be used by the Tax Assessors and the Tax Commissioner to prepare accurate tax bills based on the fair market value.

The appeal procedure adopted by the Assessors regarding commercial property was different from that followed by the Assessors with regard to residential property. Under Georgia law, when a residential owner disagreed with the appraisal of the

Assessors, he filed an appeal under the then current valid statute. Holden appealed to the Board of Equalization. But when a commercial taxpayer disagreed with the appraisal of the Assessors, they were afforded a hearing before the Assessors and the commercial taxpayer and the Assessor then reached an agreement without an appeal to the Board of Equalization or the courts. This was the procedure used for the office buildings at the following addresses on Peachtree Street, Nos. 330, 999, 1200, 1360, 191 and 133. The favorable treatment given the commercial taxpayers is illustrated by the following information:

330 One Peachtree Center - Portman

Loan - $378,000,000

Appraisal - $104,991,900

Permit Cost - $122,012,270

999 At 10th St.

Loan - $94,000,000

Appraisal - $68,990,800

1200 Promeade I

Appraisal - $35,250,000

Permit Cost - $76,755,100

1360 Midtown Plaza

Loan - $55,000,000

Appraisal - $22,304,400

Permit Cost - $41,890,650

191 Twin Towers

Loan - $290,000,000

Appraisal - 149,202,300

Permit Cost - $153,410,337

133 Georgia Pacific

Loan - $170,000,000

Appraisal - $133,854,000

The above information shows that the appraisals agreed upon by the Assessors were not only less than the permit cost issued by the City of Atlanta for the construction of the buildings but was considerably less than the actual mortgages placed on the properties when they were built. There are three Assessors and the Tax Assessors' Office has six assistants that handle 60,000 commercial properties only. These are the six people who reviewed the commercial taxpayers' appeals.

LEGAL BASIS

We rely on the law principles set out in the following Georgia Code, Opinion of the Georgia Supreme Court, the Fifth and Fourteenth Amendments to the Constitution of the United States and the Georgia Constitution.

O.C.G.A. §48-5-306 reads in pertinent part as follows:

> "The Board shall see that all taxable property within the county is assessed and returned at its fair market value and that the fair market values as between the individual taxpayers are fairly and justly equalized so that each taxpayer

shall pay as nearly as possible only his appropriate share of taxes."

Delta Air Lines, Inc. vs. Coleman, Tax Commissioner, et al, 219 Ga.12 131 SE2d 768 held on page 19 as follows:

"The discrimination in taxation which the equal protection clauses forbid is the failure of the taxing authorities to tax all like property which is subject to taxation equally or to tax the property of one owner and exempt like property belonging to another owner."

Fifth Amendment to the United States Constitution reads in part

as follows:

> "Nor (shall any person) be deprived of life, liberty or property without due process of law."

Fourteenth Amendment to the United States Constitution reads in pertinent part as follows:

> "Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section I, Paragraph 2 of the **Constitution of the State of Georgia** provides in pertinent part as follows:

"No person shall be denied the equal protection of the law."

CONCLUSIONS

The court erred in refusing to declare the 1991 reappraisal of real estate in Fulton County and the City of Atlanta to be in violation of the Constitutions of the State of Georgia and the United States.

The employees of C.L.T. had neither the training nor experience to qualify them to produce the necessary data to be fed into the computer process. Since the data they collected contained so many errors and omitted so many considerations, the final appraisals by

the computer were necessarily erroneous. The computer printout is never better than the information supplied to it.

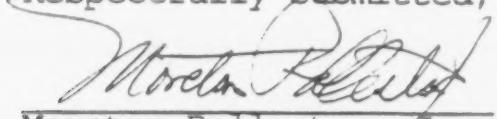
These inexperienced and untrained C.L.T. employees were the ones who produced the data for the computer. There was no way under the sun for people with their inexperience to evaluate properly and correctly a $100,000 or a $1,000,000 piece of residential property or Multi-million Georgia Pacific Building. Yet they were the ones who did it.

The valuations in the 1991 reappraisal would result in a majority of the taxpayers paying more

than his or her fair, just and appropriate share of taxes and thus would result in the confiscation of each taxpayer's property through excessive taxation in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and in violation of Article 1, Section 1, Paragraph 1 and Paragraph 2 of the Constitution of Georgia. Said unfair and improper valuations constitute an illegal taking of property without due process of law

and a violation of equal protection of the laws.

Respectfully submitted,



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APPENDIX

Appendix A

Second Division

Birdsong, P.J.,

Johnson and Smith, JJ.

August 15, 1995

Not to be officially

Reported

In the Court of Appeals of Georgia

A95A1752. Wilburta T. Holden Living Trust v. Joint City-County Board of Tax Assessors.

Bi-121

BIRDSONG, Presiding Judge.

In this case the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment.

(2) No reversible error of law appears and an opinion would have no precedential value.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Johnson and Smith, JJ., concur.

Appendix B

IN THE SUPERIOR COURT OF

FULTON COUNTY

STATE OF GEORGIA

Filed In Office

Sep 22 1994

Deputy Clerk, Superior

Court, Fulton County, Ga

WILBURTA T. HOLDEN

LIVING TRUST,

Plaintiff, CIVIL ACTION

vs. FILE NO.E-20705

JOINT CITY-COUNTY BOARD

OF ASSESSORS,

Defendant.

JUDGMENT

This action having been tried before the Court and the issues having been duly tried before a jury and the jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the verdict of the jury shall be the judgment of this Court, and that the fair market value as of January 1, 1993 of the Plaintiff's property, Parcel I.D. No. 17-0201-LL-082-0-N3-93, in Fulton County, Georgia is $317,000.00.

Defendant is hereby ordered to recalculate the ad valorem tax owing on the fair market value of $317,000.00 and to refund to

Plaintiff the difference between the tax payable on the prior valuation from which Plaintiff appealed and the tax payable upon $317,000.00, if any.

The complaint also raised a constitutional question involving denial of due process and equal protection of the law as guaranteed by the Fifth and Fourteenth Amendments to the constitution of the United States and by the constitution of the State of Georgia. This issue was tried before the Court without a jury. After hearing Plaintiff's witnesses and other evidence Defendant moved for a directed verdict with was granted in open court.

IT IS HEREBY ORDERED AND

ADJUDGED that Defendant's motion for directed verdict be an is hereby granted.

The Court further holds that there are no unresolved issues and nothing remains to be tried and that this is a final order of this Court.

This 22nd day of September, 1994.

/s/ Isaac Jenrette

ISAAC JENRETTE, Judge

Superior Court Fulton County

PREPARED BY:

/s/ Richard A. Carothers by

RICHARD A. CAROTHERS

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CONSENTED AS TO FORM BY;

/s/ Moreton Rolleston by

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Appendix C

C-1

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: November 09, 1995

Moreton Rolleston, Jr.
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Case No. S95C1884
WILBURTA T. HOLDEN LIVING TRUST
V. JOINT CITY-COUNTY BOARD OF
TAX ASSESSORS

COURT OF APPEALS CASE NO. A95A1752

C-2

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk

Supreme Court, U.S.
FILED
MAR 27 1996
CLERK

No. 95-1267

In The

Supreme Court of the United States

October Term, 1995

WILBURTA T. HOLDEN LIVING TRUST,

Petitioner,

v.

JOINT CITY-COUNTY BOARD OF TAX ASSESSORS,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Georgia

REPLY BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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21pp

QUESTIONS PRESENTED FOR REVIEW BY PETITIONER

The following questions are presented for review by Petitioner, and are set forth below for the convenience of the Court. Respondent objects to Questions one and two on the ground, among others, that there was no evidence properly admitted in the trial court upon which to raise constitutional issues. Respondent objects to Question three in that it is purely a matter of state law and no constitutional issues are implicated. Moreover, question three is not argued in Petitioner's Brief and should be deemed abandoned.

1.

Whether the 1991 and 1992 tax reappraisals, which were made by the Respondents (Assessors) of Holden's real estate and of all other real estate located in Fulton County, Georgia and City of Atlanta, Georgia, deny Holden of due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and by the Georgia Constitution.

2.

Whether the appraisal methodology adopted by the Assessors violated the Fifth and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of Georgia.

3.

Whether the trial judge should have been disqualified because he was a taxpayer in Fulton County and City of Atlanta and $30,000.00 of his salary was paid by

QUESTIONS PRESENTED FOR REVIEW BY PETITIONER – Continued

Fulton County and whether Holden was denied due process and equal protection of the same Constitutions because the trial judge was not qualified to preside.

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STATUTES

28 U.S.C. §1254 1

OPINIONS AND JUDGMENT BELOW

Within Appendix A to the Petition for Writ of Certiorari, Petitioner has provided the Order of the Court of Appeals for the State of Georgia entered on August 15, 1995, which affirmed the decision of the lower court without opinion. Appendix B contains the Order of the Superior Court of Fulton County, Georgia. Within Appendix C to the Petition for Writ of Certiorari, the Petitioner has provided the Order of the Supreme Court of the State of Georgia denying Petitioner's petition for certiorari regarding the decision of the Court of Appeals.

STATEMENT OF JURISDICTION

Respondent does not concur with Petitioner's assertion that 28 U.S.C. §1254 provides a statutory basis for jurisdiction. This appeal is not taken from a decision of a United States Court of Appeals. As no proper basis for jurisdiction has been alleged, the Petition should be dismissed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent agrees that Petitioner brings this petition for certiorari based on the Fourteenth Amendment to the Constitution of the United States. However, Respondent denies that Petitioner's rights to due process and equal protection have been violated by the Respondent.

STATEMENT OF THE CASE

This petition arises from a decision of the Georgia Court of Appeals dated August 15, 1995, affirming the decision of the trial court without opinion (Pet. App. A & B). The Supreme Court of the State of Georgia denied Holden Trust's petition for writ of certiorari to that court.

The subject matter of this case is a routine state statutory ad valorem tax appeal. The pertinent facts as proven in the trial court are set forth below.

Petitioner is the trust for the real property of George Holden, Jr. and his wife, Wilburta T. Holden. The corpus of the trust property is a residential house located in the City of Atlanta, Fulton County, Georgia, commonly known as 4355 Harris Trail.

Petitioner's property was initially appraised by Respondent and a fair market value of $486,500.00 was established. Contrary to Petitioner's assertion, the fair market value for ad valorem taxes as of January 1, 1993, was not based upon figures determined by the contract appraisal firm of Cole-Layer-Trumble. Instead, the appraised value was established at trial by Richard Davis, whose credentials as an expert real estate appraiser were stipulated by the Petitioner. Mr. Davis based his opinion on current market data. After trial, the jury returned a verdict of $317,000.00 as the fair market value of the property on January 1, 1993.

Petitioner also raised state and federal constitutional due process and equal protection issues concerning the entire mass reassessment procedure conducted in Fulton County in 1989-91. The constitutional issues were tried to

the court. Petitioner put forth no independent evidence of any alleged constitutional deficiency. Petitioner's arguments were based solely upon affidavits, deposition transcripts, loan documents and other materials originally submitted in a prior unrelated case. At the close of Petitioner's evidence, the trial court granted Respondent's Motion for Involuntary Dismissal.

ARGUMENT

A. Standard of Review

Simply stated, this petition does not present any issue of compelling importance for which certiorari should be granted. It involves no conflict between federal appellate courts, nor between a state court of last resort and a federal appellate court. Finally, it does not involve any issue of federal law that has not been settled by this Court.

United States Supreme Court Rule 10 states: "[R]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons." As Chief Justice Taft stated:

> It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393 (1923).

B. Petitioner's Writ Should be Denied as it Presents No Federal Constitutional Issues.

This case arose from the ad valorem tax appeal of a residential parcel of property in Fulton County, Georgia. A jury trial was held which established the fair market value of the property as of January 1, 1993. Immediately thereafter, the trial court conducted a bench trial of Appellant's claims that the county-wide property reassessment for Fulton County was somehow violative of the state and federal constitutions. At the close of Petitioner's evidence, the trial court granted Appellee's Motion for Involuntary Dismissal.

The Petitioner makes a number of contentions and sets forth various alleged facts regarding the reassessment process in Fulton County. See Petition pp. 5-24. However, to the extent they are even relevant, these assertions are not supported by any competent evidence in the record. In fact, none of the "facts" set forth by Petitioner were established in the bench trial or even admitted into evidence by the trial court. Moreover, Petitioner did not enumerate the exclusion of this evidence as error in his state court appeal.

The Court of Appeals of the State of Georgia affirmed the decision of the trial court *without opinion*. This summary decision was undoubtedly based upon the fact that the Petitioner's allegations were unsupported by any evidence within the record and the trial court correctly dismissed them. No constitutional ground was properly

raised for consideration by the Petitioner. Pretermitting whether the decision of the Georgia Court of Appeal's is correct or not, the standard for granting certiorari in the United States Supreme Court is significantly more demanding. The fact that this is not a case, factually or legally, of compelling importance is indicated by the denial of certiorari in the Georgia Supreme Court. For a more specific response to the constitutional allegations asserted by Petitioner, that section of Respondent's Brief in the Georgia Court of Appeals is attached as Appendix I.

General allegations of the denial of the equal protection under the Georgia and federal constitutions have been addressed by the Georgia Supreme Court in the context of ad valorem taxation.

> "We reach the same conclusion with respect to appellant's claim under the state and federal equal protection clauses. 'The applicable principles [relating to federal equal protection] have been often stated and are entirely familiar. The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable

> schemes of state taxation . . . It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value . . . "To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure." *Ohio Oil Co. v. Conway*, (281 U.S. 146, 159 (50 SC 310, 74 LE 775)).' *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (79 SC 437, 3 LE2d 480)." *McLennan v. Aldredge*, 223 Ga. 879, 885 (159 SE2d 682) (1968). We do not believe that a different rule should obtain under the equal protection clause of the Georgia Constitution. See *Ingalls Iron Works Co. v. Chilivis*, 237 Ga. 479 (228 SE2d 866) (1976)."

Rogers v. Dekalb County Tax Assessors, 247 Ga. 726, 729 (1981).

Contrary to Petitioner's belief, the only matter which was ever at issue in this case was the fair market value of a house and a lot in January of 1993 for ad valorem tax purposes. The only entity affected by the outcome of this case is the Holden Trust. The Petition for Certiorari should therefore be denied.

CONCLUSION

The Petition for Certiorari presents no issues for resolution by this Court pursuant to Rule 10. Accordingly, the Petition for Writ of Certiorari must be denied.

Respectfully Submitted,

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APPENDIX I

Argument and Citation of Authority related to constitutional issues from Respondent/Appellee's Brief in the Court of Appeals of Georgia.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

This Court, reviewing assertions of error, must look to the evidence submitted and is bound to construe the evidence to support the lower court's judgment where there is "any evidence," to support it. *See Knight v. Stevens Logging, Inc.*, 173 Ga. App. 359, 360, 326 S.E.2d 494 (1985). Moreover, absent legal error, an appellate court is without jurisdiction to overturn factual findings supported by some evidence. *Georgia Power Co. v. Harrison*, 253 Ga. 212, 216, 318 S.E.2d 306 (1984).

This Court must also presume that the lower court's judgment was correct. The appellant asserting error has the burden to affirmatively show such error by evidence submitted of record. Where the court's finding is supported by undisputed evidence, it will be upheld. *Id.; see also Barry v. Stanco Communications Products, Inc.*, 243 Ga. 68, 70, 252 S.E.2d 491 (1979).

In the present case, Appellee's motion for involuntary dismissal, pursuant to O.C.G.A. § 9-11-41(b), was granted at the close of Appellant's "evidence" on the constitutional claims. (T. 331). Absent a showing that the court abused its discretion, this Court should presume that the court followed the law and affirm the dismissal.

See Century 21 Mary Carr & Assoc. v. Jones, 204 Ga. App. 96, 97, 418 S.E.2d 435 (1992). Appellant has failed to carry its burden to show by affirmative, **competent** evidence of record that the lower court committed reversible error.

B. Inadmissible Evidence

O.C.G.A. § 24-5-31 does not authorize the wholesale introduction into evidence of the record of prior litigated matters. It is of no moment that the depositions, affidavits, loan documents, construction permits, and other materials from the case of *City of Atlanta v. North by Northwest Civic Association, Inc.*, 262 Ga. 531 (1992), were attached to the record.

These documents were objected to as irrelevant, constituting hearsay, and lacking foundation. The court below sustained each objection. See Transcript pp. 288, 298, and 299. The court below noted: "You [referring to Appellants' counsel] want to retain these as part of the record that I have not admitted into evidence." (T. 299) "I was trying to preserve it so you could have them up before the Court if you want to have them up there. They [the appellate courts] may want to look at them for some reason. **I don't want them to think they are part of the evidence that I considered here**." (T. 299).

Appellant has not enumerated as error the trial court's failure to admit the proffered records. As is well established in Georgia law, failure to raise the grounds as error prevents the Court from engaging in further review. *Gillespie v. Gillespie*, 259 Ga. 838, 388 S.E.2d 688 (1990); *Williams v. Terry*, 197 Ga. App. 209, 398 S.E.2d 239 (1990). Appellant has failed to raise the proper issue before this

Court and the issue, if attempted to be raised, is now untimely and waived. This Court should not consider any materials proffered by Appellant as they are outside of the record in this appeal.

C. Constitutional Issues

Appellant's Brief in this Court and in argument to the court below attempts to challenge the constitutionality of the 1991 Fulton County, Georgia, ad valorem tax assessment process and the methods used to appraise real property in Fulton County. In substance, Appellant's Enumeration of Errors One and Two are part and parcel of the same argument. Appellant challenges the constitutionality of the assessment on the grounds that the 1993 assessment was based upon the 1991 mass reappraisal, "appraisers employed by CLT were unqualified," (T. 295), appraisers in 1993 were unqualified (T. 322), neighborhoods were improperly constituted (T. 328), and that the appraisal methods and procedures for residential and commercial property were improperly skewed in favor of commercial owners thus shifting a disproportionate tax burden on residential property owners (T. 330). In each instance, the court below found insufficient evidence to sustain any of Appellant's constitutional challenges as violative of either equal protection or due process requirements.

Additionally, there was no evidence that any of the alleged unconstitutional acts were committed in the appraisal of Appellant's property. As stated above, Appellant has not appealed the jury's verdict as to the

valuation of its property and thus has no challenge to the constitutionality of the overall evaluation process.

In general, both Georgia and federal law relating to the constitutionality of taxation is well established. Under the Georgia Constitution of 1983, Art. VII, § I, ¶ III (a), all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. *See Youngblood v. Georgia*, 259 Ga. 864, 865, 388 S.E.2d 671 (1990). "Tax assessors are authorized to fix the fair market value of property for taxes from the best information obtainable." *Colvard v. Ridley*, 218 Ga. 490, 128 S.E.2d 732 (1962). In making tax assessments, however, authorities are not bound to "use any definite system or method to fix the fair market value." *Id.* So long as the fair market value of the subject property is attained, "the methods employed may be varied." *Chilivis v. Backus*, 236 Ga. 88, 90, 222 S.E.2d 371 (1976); *Ayres v. Douglas County Bd. of Tax Assessors*, 162 Ga. App. 224, 291 S.E.2d 84 (1982).

In reviewing Appellant's constitutional challenge, this Court should take notice of its prior decisions wherein it has been held that

> [a] statute is presumed to be constitutional until the contrary appears, and, therefore, the burden is on the party alleging a statute to be unconstitutional to prove it.

State Farm Mutual Auto. Ins. Co. v. Five Transp. Co., 246 Ga. 447, 271 S.E.2d 844 (1980). The same presumption arises in the instant appeal. For the following cited reasons, the decision of the court below was correct and should be upheld.

1. Equal Protection

Appellant's challenge based upon "equal protection" principles is misplaced. In essence, Appellant alleges that commercial property owners were treated more favorably than residential property owners with the result that the tax burden born by residential owners was unfairly increased. Again, Appellant presented no competent evidence at trial, and cites none before this Court, in support of its speculative allegation.

Equal protection under the Georgia Constitution Art. I, § 1, ¶ 1, 2, and the United States Constitution fifth and fourteenth amendments requires that taxation of all like property be treated equally. *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 19, 131 S.E.2d 768 (1963). Moreover, for purposes of equal protection analysis, classifications do not violate the requirements of either the Georgia or federal constitutions if the distinctions are less than perfect or not made with "mathematical nicety or because in practice it results in some inequality." *Five Transp. Co.*, 246 Ga. at 450-51, 271 S.E.2d at 850. So long as the distinctions and different methods used further some "rational" relationship to state interests and are not arbitrary, equal protection is not violated. *Id.*, at 451, 271 S.E.2d at 850.

The Equal Protection Clause of the Fourteenth Amendment likewise does not impose an "iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation." *Rogers v. DeKalb County Bd. of Tax Assessors*, 247 Ga. 726, 729, 279 S.E.2d 223 (1981). States are not required to "resort to close distinctions or to maintain a precise,

scientific uniformity with reference to composition, use or value." *Id.*

In *Allegheny Pittsburg Coal Co. v. Webster County*, 488 U.S. 336 (1989), the Supreme Court analyzed the role of the United States Constitution's Equal Protection Clause in state ad valorem tax assessment. The Court held the "Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.' " *Id.*, at 343 (citing *Charleston Fed. Sav. & Loan Ass. v. Alderson*, 324 U.S. 182 (1945)). "Just as that Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, . . . it does not," the Court continued, "require immediate general adjustment on the basis of the latest market developments." *Allegheny Pitt.*, 488 U.S. at 343.

In the instant appeal, Appellant has cited no competent evidence that the methods or procedures used by the Joint City-County Board of Tax Assessors in any way resulted in a violation of the equal protection clauses of the Georgia Constitution or the United States Constitution. Appellant offers nothing more than bare allegations based on speculation devoid of competent testimony that the procedures applied to commercial property owners differed in any significant way from the procedures and privileges applied to residential property owners. The court below properly dismissed Appellant's contentions based on equal protection grounds and this Court should affirm that decision.

2. Due Process

Legal standards for the determination of due process rights are well recognized in both Georgia and federal law. Due process does not

> guarantee to the citizens of a State any particular form or method of State procedure. Its requirements are satisfied if [the party alleging due process deprivation] has reasonable notice and an opportunity to be heard, and to present his claim or defense due regard being had to the nature of the proceeding and the character of the rights which might be affected by it.

Hancock v. Bd. of Tax Assessors, 226 Ga. 570, 176 S.E.2d 102 (1970) (citing *Zorn v. Walker*, 206 Ga. 181, 56 S.E.2d 511 (1949)).

Federal due process standards do not differ. In *McKesson v. Division of Alcoholic Beverages*, 496 U.S. 18, 37-9 (1990), the Court held that the Due Process Clause required, in addition to notice and hearing, a fair opportunity to challenge the accuracy and legal validity of [the appellants'] tax obligations. By creating a "clear and certain remedy" to correct errors, the states do not violate due process requirements. *Id.*, at 39.

Likewise, although Appellant's due process challenge is vague and fails to specify those procedure(s) which it finds violative of the Constitution, to the extent that Appellant claims that due process requires a "pre-deprivation" hearing, federal courts have uniformly held that in taxation cases due process does not compel a hearing before assessing taxes. *See, e.g., Agbanc, Ltd. v.*

Berry, 678 F. Supp. 805, 808-9 (N.D. Cal. 1987); *O'Connor v. United States*, 669 F. Supp. 317, 322-23 (D. Nev. 1987).

Finally, reviewing the State of Wisconsin's income tax appeals procedures, the United States District Court for the Eastern District of Wisconsin held that procedures indistinguishable from Georgia's ad valorem tax appeals did not violate due process. *Knies v. Richardson*, 600 F. Supp. 763 (E.D. Wisc. 1985). In Wisconsin, after the initial assessment, taxpayers are entitled to a redetermination of the initial assessment, then an appeal to the Wisconsin Tax Appeals Commission, then judicial review in the State's circuit courts, and finally appeal to Wisconsin's appellate forums. Evaluating the Wisconsin procedural process, the court determined "the procedural safeguards available to taxpayers who wish to challenge tax assessments fully satisfy the due process requirements of the fifth amendment." *Knies*, 600 F. Supp. at 765.

Appellant in the present case has completely failed to establish any evidence that the procedures under Fulton County's tax assessment procedures provided it anything less than the fullest measures of due process. Appellant was initially assessed, appealed to the Board of Tax Assessors, the Board of Equalization, the Superior Court of Fulton County, and now presents its case here, the highest court in the State. Combined with the fact that Appellant has not appealed the jury verdict as to the valuation of its property, what more due process does Appellant contend is required? Appellee submits that Appellant has received the full measure of the law, and that the procedures used in assessing ad valorem taxes on real property in Fulton County, Georgia, are procedurally

and substantively in compliance with the State and federal constitutions.